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In re Application of	:	
EBERL, Roland et al.	:	
Application No.: 10/551,650	:	DECISION ON
PCT No.: PCT/EP2000/009843	:	
Int. Filing Date: 07 October 2000	:	REQUEST
Priority Date: None	:	
Attorney's Docket No.: 101795.56304US	:	UNDER 37 CFR 1.42
For: INFORMATION SYSTEM	:	

This is a decision on applicants' Petition Under 37 CFR 1.47(a) and 1.42, filed in the United States Patent and Trademark Office on 05 October 2009. For the reasons discussed below, it has been treated as a Request Under 37 CFR 1.42.

BACKGROUND

On 04 May 2009, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration and the surcharge for late filing of the oath or declaration were required.

On 05 October 2009, applicants submitted this petition.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42.

Inventor Roland Eberl is deceased. According to Mr. Matthias Mayer, he is the former legal representative of the estate, but the estate has been closed. He is not refusing to execute the declaration, but stating that legally he is no longer empowered to do so. If a legal representative was appointed, but has since been discharged, a legal representative must be reappointed. MPEP 409.01(c). A 37 CFR 1.47(a) petition is appropriate only when an inventor refuses to sign or cannot be located or when an appointed legal representative refuses to sign. The declaration must be executed by the legal representative of the estate of Roland Eberl. Sending paperwork to the *former* legal representative is not sufficient as the legal representative was discharged and no longer has authority to speak for the deceased inventor.

Further, applicant's petition under 37 CFR 1.47(a) would not have been sufficient as the legal representative was not presented with a complete copy of the application papers.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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